

SUKMA DARMAWAN SASMITAAT MADJA

a

v.

KETUA PENGARAH PENJARA MALAYSIA & ANOR

FEDERAL COURT, KUALA LUMPUR

b

EUSOFF CHIN CJ

LAMIN MOHD YUNUS PCA

ZAKARIA YATIM FCJ

[CRIMINAL APPEAL NO: 05-21-98(W)]

3 MARCH 1999

c

[1999] CLJ JT(4)

CRIMINAL PROCEDURE: Jurisdiction of court - Sessions Court - Whether has jurisdiction to try all offences under Penal Code except those punishable with death - Subordinate Courts Act 1948, ss. 3, 63 & 64 - Penal Code, ss. 2 & 3 - Whether has jurisdiction to try offence of gross indecency under s. 377D of Penal Code committed by Muslims - Whether art. 121(1A) of Federal Constitution read with s. 25 of Syariah Criminal Offences (Federal Territories) Act 1997 removes jurisdiction of Sessions Court to try offence of gross indecency under s. 377D of Penal Code committed by Muslims

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CRIMINAL PROCEDURE: Prosecution - Act or omission constituting an offence under two or more written laws - Whether offender may be prosecuted and punished under any of those laws - Offences triable by either civil courts or Syariah Court - Whether offender may be prosecuted in either court - Interpretation Acts 1948 & 1967, s. 59

f

STATUTORY INTERPRETATION: Constitution - Principles of interpretation - Federal Constitution, art. 121(1A) - Whether literal interpretation proper - Whether should be construed in isolation - Whether court should adopt construction which ensures smooth running of criminal justice system - True purpose of art. 121(1A) - Whether court entitled to make implications into language of Constitution - Harmonious working of Constitution with existing laws

g

CRIMINAL LAW: Penal Code - Section 377D - Gross indecency - Syariah Criminal Offences (Federal Territories) Act 1997, s. 25 - "Liwat" or sexual relations between male persons - Act constituting an offence under two written laws - Whether Sessions Court has jurisdiction to try offence of gross indecency committed by Muslims - Whether may be prosecuted and punished under any of the two laws - Whether may be prosecuted in either Sessions Court or Syariah Court

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- a** *ISLAMIC LAW: Syariah Court - Jurisdiction - Federal Constitution, art. 121(1A) - "Jurisdiction of the Syariah Courts" - Whether means 'exclusive' jurisdiction of Syariah Court - When does Syariah Court have exclusive jurisdiction to the exclusion of the civil courts - Whether only for offences under Syariah Criminal Offences (Federal Territories) Act 1997 which have no equivalent in any federal criminal statutes - Jurisdiction to try offence of "liwat" under s. 25 of Syariah Criminal Offences (Federal Territories) Act 1997*

- c** The appellant was convicted and sentenced to six months' imprisonment by the Sessions Court after he pleaded guilty to a charge of gross indecency under s. 377D of the Penal Code ('the PC'). His application for a writ of *habeas corpus* – on the ground that the Sessions Court had no jurisdiction to hear, convict or sentence him in view of art. 121(1A) of the Federal Constitution ('the FC') read with s. 25 of the Syariah Criminal Offences (Federal Territories) Act 1997 ('Act 559') – was refused by the High Court. The instant appeal to the Federal Court was from the refusal of the Court of Appeal to reverse the said decision of the High Court.

- e** The appellant contended that since "liwat" (defined in s. 2 of Act 559 as "sexual relations between male persons") is an offence triable by the Syariah Court, and the parties allegedly involved herein professed the religion of Islam, the appellant should be charged and tried in the Syariah Court instead. Section 1(2) of Act 559 was cited in support. Conversely, the respondents relied on s. 59 of the Interpretation Acts 1948 & 1967 ('the IA').

- f** **Held:**
Per Eusoff Chin CJ

- g** **[1a]** Article 121(1) and (1A) of the FC should not be interpreted literally or examined in isolation but should be construed together and given a construction which ensures the smooth running of the entire system. The inferior courts are established under s. 3 of the Subordinate Courts Act 1948 ('the SCA') and ss. 63 and 64 thereof confer criminal jurisdiction upon the Sessions Court. Whilst Act 559 applies only to the Federal Territories and to persons professing the religion of Islam, the PC applies throughout and beyond Malaysia and to every person irrespective of race, sex or religion (ss. 2 & 3 of the PC). Section 25 of Act 559 and s. 377D of the PC are not in *pari materia*; whilst the former deals only with sexual relations between male persons, the latter deals with any act of gross indecency involving any person, be it between male persons or female persons
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or male and female persons. Therefore, the Sessions Court has the jurisdiction to try all offences committed under the PC except those punishable with death. a

[1b] The purpose of art. 121(1A) of the FC is to prevent the High Court from exercising its powers of judicial review over the decisions of the Syariah Court. The expression “jurisdiction of the Syariah Courts” in art. 121(1A) of the FC signifies the ‘exclusive’ jurisdiction of the Syariah Court. It is only in respect of offences under Act 559 (which have no equivalent in the PC or other federal criminal statutes) that the Syariah Court has exclusive jurisdiction to the exclusion of the civil courts. b
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[2] Where an act or omission is an offence under two or more written laws, the offender may be prosecuted and punished under *any* of those laws, so long as he is not *prosecuted* and punished twice for the same offence (s. 59 of the IA). Thus, where an offender commits an offence which is triable by **either** the civil courts or the Syariah Court, he may be prosecuted in **either** of those courts. d

Per curiam:

[1] The Syariah officers will only investigate offences triable by the Syariah Court where all the parties, including the witnesses, are of the Islamic religion. e

[2] Where a Muslim male and a non-Muslim male commit “liwat” with each other, which is an offence both under s. 25 of Act 559 and s. 377D of the PC, both the offenders will have to be charged under s. 377D of the PC and tried in the Sessions Court. f

[Appeal dismissed.]

[Bahasa Malaysia Translation Of Headnotes]

Perayu telah disabitkan kesalahan dan dijatuhkan hukuman penjara selama enam bulan oleh Mahkamah Sesyen setelah mengaku salah atas dakwaan melakukan kelucahan melampau dibawah s. 377D Kanun Keseksaan (KK). Permohonan beliau untuk perintah *habeas corpus* atas alasan bahawa Mahkamah Sesyen tidak mempunyai bidang kuasa untuk mendengar, menyabitkan atau menghukuminya beliau memandangkan perkara 121(1A) Perlembagaan Persekutuan dibaca dengan s. 25 Akta Kesalahan Jenayah Syariah (Wilayah-Wilayah Persekutuan) 1997 (Akta 559) telah ditolak oleh Mahkamah Tinggi. Rayuan ini kepada Mahkamah Persekutuan adalah kerana keengganan Mahkamah Rayuan untuk mengakaskan keputusan Mahkamah Tinggi tersebut. g
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- a* Perayu berhujah bahawa memandangkan “liwat” (didefinisikan dalam s. 2 Akta 559 sebagai “hubungan seks diantara lelaki”) adalah kesalahan yang boleh dibicarakan oleh Mahkamah Syariah dan pihak-pihak yang dikatakan terlibat disini mengamalkan agama Islam, perayu sebaliknya patut didakwa dan dibicarakan di Mahkamah Syariah. Sebagai sokongan, s. 1(2) Akta 559 dinamakan. Sebaliknya responden telah bergantung kepada s. 59 Akta-Akta Tafsiran 1948 dan 1967 (AT).
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Diputuskan:

Oleh Eusoff Chin KHN

- c* **[1a]** Perkara 121(1) dan (1A) Perlembagaan Persekutuan tidak patut diinterpretasikan secara perkataan demi perkataan atau diperiksa berasingan tetapi sepatutnya ditafsirkan bersama dan diberi satu pengertian yang akan memastikan perjalanan licin seluruh sistem. Mahkamah bawahan telah didirikan dibawah s. 3 Akta Mahkamah Rendah 1948, dan ss. 63 dan 64 disitu memberikan bidang kuasa jenayah kepada Mahkamah Sesyen. Sedangkan Akta 559 hanya dipraktikkan di Wilayah-Wilayah Persekutuan dan kepada orang-orang yang mengamalkan agama Islam, Kanun Keseksaan dipraktikkan di seluruh dan diluar Malaysia dan kepada setiap orang tidak kira kaum, jantina atau agama (ss. 2 & 3 KK). Seksyen 25 Akta 559 dan s. 377D KK tidak berada dalam *pari materia*; manakala Akta 559 merangkumi kelucahan melampau di antara lelaki, s. 377D KK merangkumi segala kelakuan kelucahan melampau yang melibatkan seseorang, samaada ia di antara kaum lelaki, kaum wanita atau antara lelaki dan wanita. Oleh yang demikian Mahkamah Sesyen mempunyai bidang kuasa untuk membicarakan semua kesalahan yang dilakukan dibawah Kanun Keseksaan kecuali kesalahan yang boleh dijatuhkan hukuman mati.
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- g* **[1b]** Tujuan perkara 121(1A) Perlembagaan Persekutuan adalah untuk menahan Mahkamah Tinggi dari menggunakan kuasa pemeriksaan kehakiman ke atas keputusan-keputusan Mahkamah-Mahkamah Syariah. Pengucapan “bidang kuasa Mahkamah Syariah” dalam perkara 121(1A) Perlembagaan Persekutuan menandakan bidang kuasa eksklusif Mahkamah Syariah. Hanya dalam hal kesalahan jenayah dibawah Akta 559 (yang tidak mempunyai setarafnya dalam Kanun Keseksaan atau statut jenayah persekutuan yang lain) Mahkamah Syariah mempunyai bidang kuasa eksklusif dengan menyingkirkan bidang kuasa Mahkamah-Mahkamah Sivil.
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- [2] Di mana satu perlakuan atau peninggalan adalah satu kesalahan di bawah dua atau lebih undang-undang bertulis, pesalah boleh didakwa dan dihukumi di bawah undang-undang yang mana satu, selagi beliau tidak didakwa dan dihukumi dua kali untuk kesalahan yang sama (s. 59 AT). Oleh yang demikian di mana pesalah melakukan kesalahan yang boleh dibicarakan samaada oleh Mahkamah Sivil atau Mahkamah Syariah, beliau boleh didakwa dalam mana-mana mahkamah tersebut. a
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Per curiam:

- [1] Pegawai-pegawai Syariah hanya akan menyiasat kesalahan yang boleh dibicarakan oleh Mahkamah Syariah dimana kesemua pihak, termasuk saksi-saksi, adalah beragama Islam. c
- [2] Di mana seorang lelaki Islam dan seorang lelaki yang tidak beragama Islam melakukan “liwat” di antara satu sama lain, yang merupakan kesalahan di bawah s. 25 Akta 559 dan s. 377D KK kedua-dua pesalah perlu didakwa dibawah s. 337D KK dan dibicarakan di Mahkamah Sesyen. d

[Rayuan ditolak.]

Case(s) referred to:

Becke v. Smith [1836] 2 M&W 191 (*refd*)
R v. Tonbridge Overseers [1884] 13 QBD 339 (*refd*) e

Legislation referred to:

Administration of Muslim Law Enactment 1952 (Selangor), s. 43(6)
Federal Constitution, art. 121(1), (1A) f
Interpretation Acts 1948 & 1967, s. 59
Penal Code, ss. 2, 3, 377D
Subordinate Courts Act 1948, ss. 3, 63, 64
Syariah Criminal Offences (Federal Territories) Act 1997, ss. 1(2), 2, 25

For the appellant - Karpal Singh (Jagdeep Singh Deo, Gobind Singh Deo & Pawancheek Marican with him); M/s Karpal Singh & Co g
For the respondents - Dato' Ahmad Maarop SFC (Kamaludin Md Said FC with him); A-G's Chambers

[Appeal from Court of Appeal; Criminal Appeal No: W-05-73-98; [1999] 1 CLJ 481; [1998] 4 CLJ 538] h

Reported by Gan Peng Chiang

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*a***JUDGMENT****Eusoff Chin CJ:**

This appeal was argued before us on 3 March 1999. We confirmed the decision of the Court of Appeal and dismissed the appeal.

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The appeal centred on art. 121 of the Federal Constitution, in particular cls. (1) & (1A). The learned counsel for the appellant contended that the Sessions Court had no jurisdiction to try the appellant for committing an act of gross indecency, an offence under s. 377D of the Penal Code because the offence of 'Liwat' is triable by the Syariah Court. We quote the relevant provisions of the law:

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Article 121 of the Federal Constitution states -

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121. (1) There shall be two High Courts of co-ordinate jurisdiction and status, namely:

(a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry in Kuala Lumpur;

and

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(b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;

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and such inferior courts as may be provided by federal law and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.

(1A) The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

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Section 377D of the Penal Code states:

377D. Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.

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'Liwat' is defined under s. 2 of the Syariah Criminal Offences (Federal Territories) Act 1997 (hereinafter Act 559) as follows:

'Liwat' means sexual relations between male persons.

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Section 25 of Act 559 provides:

25. Any male person who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

Learned counsel for the appellant confined his argument on the interpretation of art. 121(1A) only. He argued that since 'liwat' is an offence triable by a Syariah Court, and the parties involved are persons professing the religion of Islam, the appellant ought to be charged and tried in the Syariah Court. He cited s. 1(2) of Act 559 which states:

1.(2) This Act shall apply only –

(a) to the Federal Territories of Kuala Lumpur and Labuan; and

(b) to persons professing the religion of Islam.

Learned counsel for the respondent cited s. 59 of the Interpretation Act which states:

"59. Where any act or omission constitutes an offence under two or more written laws or under a written law and at common law the offender is liable to be prosecuted and punished under either or any of those laws or at common law, but shall not be liable to be punished twice for the same offence.

The insertion of cl. (1A) into art. 121 of the Federal Constitution was done by Parliament *vide* Act 704/88 which came into force on 10 June 1988. The Court of Appeal dealt with this amendment in its judgment and stated:

Prior to the introduction of Article 121(1A), the ordinary Courts had the power to review, and quite regularly reviewed, the decisions of Syariah Courts by *certiorari*. That this caused some concern among those entrusted with the task of administering Muslim law is reflected in the speech delivered in the Dewan Rakyat when introducing the Bill that eventually became Act A704/88. We say at once that we are, in the circumstances of the present case, entitled to refer to the proceedings during the debate of the Bill in the Dewan Rakyat. No question of parliamentary privilege arises here. That we are entitled to make such reference is now settled by the decision of the Federal Court in *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 3 MLJ 345 which followed the majority speeches of the House in *Pepper v. Hart* [1993] 1 All ER 42. Having examined the Hansard of the Dewan Rakyat we find support for the conclusion that the limited purpose of Act A704/88 was to prevent the High Court from exercising its powers of judicial review over decisions of a Syariah Court.

a In our view, the Article 121(1A) should receive that meaning which advances the purpose for which it was introduced into the Federal Constitution. If it becomes necessary to make an implication, as we think the present case does, then we shall make it. We are satisfied that such an approach would harmonise the Article in question with the rest of the Constitution. It would, as contended by the respondents, certainly remove the spectre of a conflict between that Article and other provisions of the Constitution, in particular the Ninth Schedule, with regard to any question of legislative competence upon the subject of criminal law. Equally, it will ensure that well-established provisions of the Penal Code are not rendered nugatory. In deciding upon this course we are really following a well-trodden path of constitutional interpretation.

c Accordingly, in the light of the authorities we have referred to earlier in this judgement, we have come to the conclusion that the expression “jurisdiction of the Syariah courts” refers to “the **exclusive** jurisdiction” of those courts. In other words, if a person professing the religion of Islam does a proscribed act which is an offence both under the Penal Code and the Act, then the courts referred to in Article 121(1) will have jurisdiction to try such an offence. It is only in respect of offences under the Act that a Syariah court may have exclusive jurisdiction. For example, the offence of adultery which is prescribed as an offence under the Act has no equivalent in the Penal Code or other Federal criminal statute. So, if a person professing the religion of Islam commits adultery, then, he or she may be tried only in a Syariah court.

d We therefore find ourselves unable to agree with the submission of Encik Karpal Singh of counsel for the appellant that the interpretation we have placed upon Article 121(1A) has the effect of negating the provisions of the Act. For, it is clear that “where the law provides, either in the same or different Enactments, for different penalties for the same offence that both or all of the provisions as to punishments are intended to stand side by side and that it is left to the proper authorities to decide under which of the different provisions the offender shall be prosecuted and punished.” (per Spenser Wilkinson J., in *Public Prosecutor v. Viran* [1947] MLJ 62, at p. 64.) The appellant’s concern, voiced through his counsel, that he may be open to prosecution twice over, once under the Penal Code and later under the Act, is really without basis by reason of the express provisions of Article 7(2) of the Federal Constitution. That Article reads:

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h (2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted.

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We also note that the offence defined by section 377D of the Penal Code is much wider than the offence of “liwat” under the Act. This reinforces the view we take in regard to the interpretation that Article 121(1A) should receive. It is no doubt true that the prosecution used the term “meliwat” to describe the *actus reus* committed by the appellant in the statement of facts in support of the charge. But the use of that expression did not take the case out of the jurisdiction of the Sessions Court. For it must be borne in mind that the Sessions Court was not dealing with an offence of “liwat” under the Act. It was merely dealing with an offence of gross indecency under section 377D of the Penal Code.

We agree with the views expressed by the Court of Appeal on the necessity of cl. (1A) being introduced into art. 121 of the Federal Constitution. It was to stop the practice of aggrieved parties coming to the High Court to get the High Court to review decisions made by Syariah Courts. Decisions of Syariah Court should rightly be reviewed by their own appellate courts. They have their own court procedure where decisions of a court of a Kathi or Kathi Besar are appealable to their Court of Appeal.

Since the Syariah Courts have their own system, their own rules of evidence and procedure which in some respects are different from those applicable to the civil courts it is only appropriate that the civil court should refrain from interfering with what goes on in the Syariah Courts. This policy of non-interference is reciprocated by the Syariah Courts. The Administration of Muslim Law Enactment 1952 (Selangor) (hereinafter, the Selangor Enactment) had originally been adopted with modifications and applied to the Federal Territories of Kuala Lumpur and Labuan by Act A206, P.U.(A)49/1974 and P.U.(A)352/1985. Section 43(6) of the Selangor Enactment entrenches this policy and it states:

43. (6) Nothing in this Enactment contained shall affect the jurisdiction of any Civil Court and, in the event of any difference or conflict arising between the decision of a court of the Kathi Besar or a Kathi and the decision of a Civil Court acting within its jurisdiction, the decision of the Civil Court shall prevail.

While agreeing with the opinion expressed by the Court of Appeal, we are of the view that in interpreting cl. (1A) of art. 121, it is wrong to confine ourselves to examining this clause in isolation.

Article 121 deals with the judicial power of the Federation. This Article established the two High Courts and “such inferior courts as may be provided by federal law, and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.”

- a* The inferior courts ie, the Sessions Courts, the Magistrates' Courts and the Penghulu's Courts were established under s. 3 of the Subordinate Courts Act 1948.

The Sessions Courts are conferred criminal jurisdiction by s. 63 and 64 of the Subordinate Courts Act 1948 which provide:

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63. A Sessions Court shall have jurisdiction to try all offences other than offences punishable with death.
64. A Sessions Court may pass any sentence allowed by law other than the sentence of death.

- c* It is pertinent to note that while Act 559 applies only to the Federal Territories of Kuala Lumpur and Labuan, and to people professing the religion of Islam, the Penal Code applies throughout and beyond Malaysia. It applies to every person irrespective of race, sex or religion. Sections 2 and 3 of the Penal Code state:

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2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within Malaysia.
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3. Any person liable by law to be tried for an offence committed beyond the limits of Malaysia, shall be dealt with according to the provisions of this Code for any act committed beyond Malaysia, in the same manner as if such act had been committed within Malaysia.

- f* Having examined these provisions of the relevant laws, it is clear that the Sessions Court has the jurisdiction to try offences committed under the Penal Code except those punishable with death.

- g* Section 25 of Act 559 and s. 377D of the Penal Code are not in *pari materia*. While s. 25 of Act 559 deals only with sexual relations between male persons, s. 377D of the Penal Code deals with any act of gross indecency involving any person, and it can be between male persons, between female persons, or between male and female persons. As to what act constitutes indecency or gross indecency the legislature itself has seen it fit not to give it a definition, but has left it entirely to the court to determine. It is not possible to define what is indecent or grossly indecent act. As the High Court judge in this case had stated in his judgment –
- h* “Every person may have a different view of what is indecent. Our individual perception of what is indecent depends upon our upbringing, which includes religious, cultural and family values.” Gross indecency certainly includes sexual relations between male persons.

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We are of the view that cl. (1A) of art. 121 should not be construed literally because a literal interpretation would give rise to consequences which the legislature could not possibly have intended. Parke B. in *Becke v. Smith* [1836] 2 M&W 191 at p. 195 stated: a

It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience but no further. b

Brett LJ in *R.v. Tonbridge Overseers* [1884] 13 QBD 339 at p. 342 said: c

If the inconvenience is not only great but what I may call an absurd inconvenience by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should **not** read it according to its ordinary grammatical meaning. (emphasis added). d

We would, therefore prefer to construe both cls. (1) and (1A) of art. 121 together and choose a construction which will be consistent with the smooth working of the system which this Article purports to regulate, and reject an interpretation that will lead to uncertainty and confusion into the working of the system. Since cl. (1) of art. 121 and the provisions of federal law referred to earlier confer jurisdiction on a Sessions Court to try offences in the Penal Code (other than those punishable with death) and has been doing so for a very long time, it would lead to grave inconvenience and absurd results to now say that the Sessions Court should not try an offence under s. 377D because the accused is a person professing the religion of Islam. e

To ensure the smooth running of the system, we would apply the provisions of s. 59 of the Interpretation Act so that where an act or omission is an offence under two or more written laws the offender may be prosecuted and punished under any of those laws so long as he is not prosecuted and punished twice for the same offence. It follows that where an offender commits an offence triable by either the civil court or a syariah court, he may be prosecuted in either of those courts. f

In the early fifties Syariah Courts depended on the civil courts for enforcements of their judgments due to lack of proper staff. But to-day the Syariah Courts in each state and in the Federal Territories have their own officers to investigate and prosecute cases in their own courts. Their court system is similar to and running parallel with the civil court system. g

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- a* It has its own Syariah Subordinate Courts, the Syariah High Courts and Syariah Appeal Court. The decisions of the Syariah Subordinate Court are appealable to the Syariah High Court, and the Syariah Court of Appeal hears appeals from their High Courts. The Chief Syariah judge is the head of the Syariah Courts, and the Chief Syariah Prosecutor has the power to
- b* institute, conduct or discontinue any proceeding for an offence before a Syariah Court.

- c* It follows that the Syariah Officers would only investigate offences triable by the Syariah Court where all the parties including witnesses are of the Islamic religion. This is so because the Syariah Courts have jurisdiction only over persons professing the religion of Islam. Therefore, where a Muslim male and non-Muslim male commit 'liwat' on each other which is an offence both under s. 25 of the Act 559 and s. 377D of the Penal Code the offenders will have to be charged under the Penal Code and triable in the Sessions Court.

- d* To hold that because cl. (1A) of art. 121 of the Federal Constitution forbids the Sessions Court to try such a case since it is also an offence under Act 559, cannot be the intention of Parliament, as it will lead to undesirable consequences where both the offenders will escape prosecution, a situation which must be avoided.

- e* We therefore agree with and confirm the decision of the Court of Appeal, and dismiss this appeal.

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